

(i) *Requirements for project owners.* In the second year after completion of a rental project and annually thereafter until the end of the project's retention period, the project owner must:

(A) Certify to the Bank that:

(1) The tenant rents and incomes are in compliance with the rent and income targeting commitments made in the AHP application; and

(2) The project is habitable; and

(B) Maintain documentation regarding tenant rents and incomes and project habitability available for review by the Bank, to support such certifications.

(ii) *Requirements for members.* For rental projects receiving \$500,000 or less in AHP subsidy from a member, during the period from the second year after project completion to the end of the project's retention period, the member must certify to the Bank at least once every three years, based on an exterior visual inspection, that the project appears to be suitable for occupancy.

(iii) *Requirements for Banks—(A) Certifications received by the Bank.* Each Bank shall review certifications provided by project owners and members regarding tenant rents and incomes and project habitability.

(B) *Review of project documentation.* Each Bank shall review documentation maintained by the project owner regarding tenant rents and incomes and project habitability to verify compliance with the rent and income targeting commitments in the AHP application and project habitability, according to the following schedule:

(1) *\$50,001 to \$250,000.* For projects receiving \$50,001 to \$250,000 of AHP subsidies, the Bank must review project documentation for a sample of the project's units at least once every six years;

(2) *\$250,001 to \$500,000.* For projects receiving \$250,001 to \$500,000 of AHP subsidies, the Bank must review project documentation for a sample of the project's units at least once every four years; and

(3) *Over \$500,000.* For projects receiving over \$500,000 of AHP subsidies, the Bank must perform an on-site review of project documentation for a sample of the project's units at least once every two years.

(C) *Sampling plan.* A Bank may use a reasonable sampling plan to select the projects monitored each year and to review the project documentation supporting the certifications made by members and project owners.

(iv) *Monitoring by a contractor.* A Bank, in its discretion, may contract with a third party to carry out the Bank's monitoring obligations set forth in paragraph (a)(3)(iii) of this section.

(b) *Annual adjustment of targeting commitments.* For purposes of determining compliance with the targeting commitments in an AHP application, such commitments shall be considered to adjust annually according to the current applicable median income data. A rental unit may continue to count toward meeting the targeting commitment of an approved AHP application as long as the rent charged remains affordable, as defined in §960.1, for the household occupying the unit.

§960.12 Remedial actions for non-compliance.

(a) *Repayment of subsidies by members—(1) Noncompliance by member.* A member shall repay to the Bank the amount of any subsidies (plus interest, if appropriate) that, as a result of the member's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(i) The member cures the noncompliance within a reasonable period of time; or

(ii) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to §§960.7 or 960.9.

(2) *Noncompliance by project sponsors or owners—(i) Duty to recover subsidies.*

A member shall recover from the sponsor of an owner-occupied project or the owner of a rental project and repay to the Bank the amount of any subsidies (plus interest, if appropriate) that, as a result of the sponsor's or owner's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(A) The sponsor or owner cures the noncompliance within a reasonable period of time; or

(B) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to §§960.7 or 960.9.

(ii) *Limitation on duty to recover subsidies.* The member shall not be liable to the Bank for the return of amounts that cannot be recovered from the project sponsor or owner through reasonable collection efforts by the member.

(b) *Repayment of subsidies by project sponsors or owners.* A sponsor of an owner-occupied project and the owner of a rental project shall repay to the member the amount of any subsidies (plus interest, if appropriate) that, as a result of the sponsor's or owner's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, unless:

(1) The sponsor or owner cures the noncompliance within a reasonable period of time; or

(2) The circumstances of noncompliance are eliminated through a modification of the terms of the application for the subsidy pursuant to §§960.7 or 960.9.

(c) *Requirements for Banks—(1) Duty to recover subsidies.* A Bank shall recover from a member:

(i) The amount of any subsidies (plus interest, if appropriate) that, as a result of the member's actions or omissions, is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part; and

(ii) The amount of any subsidies recovered by a member from the sponsor of an owner-occupied project or the owner of a rental project pursuant to the requirements of paragraph (a)(2) of this section.

(2) *Settlements.* A Bank may enter into an agreement or other arrangement with a member for the purpose of settling claims against the member for repayment of subsidies. If a Bank enters into a settlement that results in the return of a sum that is less than the full amount of any AHP subsidy

that is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part, the Bank may be required by the Finance Board to reimburse its AHP fund in the amount of any shortfall under paragraph (c)(3) of this section, unless:

(i) The Bank has sufficient documentation showing that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts); or

(ii) The Bank obtains a determination from the Board of Directors that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts).

(3) *Reimbursement of AHP fund.* The Finance Board may order a Bank to reimburse its AHP fund in an appropriate amount upon determining that:

(i) As a result of the Bank's actions or omissions, AHP subsidy is not used in compliance with the terms of the application for the subsidy, as approved by the Bank, and the requirements of this part; or

(ii) The Bank has failed to recover AHP subsidy from a member pursuant to the requirements of paragraph (c)(1) of this section, and has not shown such failure is reasonably justified, considering factors such as the extent of the Bank's recovery efforts.

(d) *Parties to enforcement proceedings.* A Bank, in its AHP implementation plan, may provide for a member, project sponsor, or project owner to enter into a written agreement with a Bank under which such member, sponsor, or owner consents to be a party to any enforcement proceeding initiated by the Finance Board regarding the repayment of AHP subsidies received by such member, sponsor, or owner, or the suspension or debarment of such parties, provided that the member, sponsor, or owner has agreed to be bound by the Finance Board's final determination in the enforcement proceeding.

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(e) *Use of repaid subsidies.* Amounts repaid to a Bank pursuant to this section shall be made available for other AHP-eligible projects.

(f) *Suspension and debarment*—(1) *At a Bank's initiative.* A Bank may suspend or debar a member, project sponsor, or owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an application for AHP subsidy or the requirements of this part.

(2) *At the Finance Board's initiative.* The Finance Board may order a Bank to suspend or debar a member, project sponsor, or owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an application for AHP subsidy or the requirements of this part.

(g) *Transfer of Program administration.* Without limitation on other remedies, the Finance Board, upon determining that a Bank has engaged in mismanagement of its Program, may designate another Bank to administer all or a portion of the first Bank's annual AHP contribution, for the benefit of the first Bank's members, under such terms and conditions as the Finance Board may prescribe.

(h) *Finance Board actions under this section.* Except as provided in paragraph (c)(2)(ii) of this section, actions taken by the Finance Board pursuant to this section shall be subject to the Finance Board's Procedures for Review of Disputed Supervisory Determinations.

§ 960.13 Agreements.

(a) *Agreements between Banks and members.* A Bank shall have in place with each member receiving a subsidized advance or direct subsidy an agreement or agreements containing the provisions set forth in this section.

(b) *General provisions*—(1) *Subsidy pass-through.* The member shall pass on the full amount of the AHP subsidy to the project, or household in the case of homeownership set-aside funds, for which the subsidy was approved.

(2) *Use of subsidy*—(i) *Use of subsidy by the member.* The member shall use the

AHP subsidy in accordance with the terms of the member's application for the subsidy, as approved by the Bank, and the requirements of this part.

(ii) *Use of subsidy by the project sponsor or owner.* The member shall have in place an agreement with the sponsor of an owner-occupied project and each owner of a rental project in which the sponsor or owner agrees to use the AHP subsidy in accordance with the terms of the member's application for the subsidy, as approved by the Bank, and the requirements of this part.

(3) *Repayment of subsidies in case of noncompliance*—(i) *Noncompliance by the member.* The member shall repay subsidies to the Bank in accordance with the requirements of § 960.12(a)(1).

(ii) *Noncompliance by a project sponsor or owner*—(A) *Agreement.* The member shall have in place an agreement with the sponsor of an owner-occupied project and each owner of a rental project in which the sponsor or owner agrees to repay AHP subsidies in accordance with the requirements of § 960.12(b).

(B) *Recovery of subsidies.* The member shall recover from the project sponsor or owner and repay to the Bank any subsidy in accordance with the requirements of § 960.12(a)(2).

(4) *Project monitoring*—(i) *Monitoring by the member.* The member shall comply with the monitoring requirements of §§ 960.10(b) and 960.11(a)(3)(ii).

(ii) *Monitoring by the project sponsor.* The member shall have in place an agreement with the sponsor of an owner-occupied project in which the sponsor agrees to comply with the monitoring requirements of § 960.10(a)(1).

(iii) *Monitoring by the project owner.* The member shall have in place an agreement with the owner of a rental project in which the owner agrees to comply with the monitoring requirements of §§ 960.10(a)(2) and 960.11(a)(3)(i).

(5) *Transfer of AHP obligations to another member.* The member will make best efforts to transfer its obligations under the approved application for AHP subsidy to another member in the event of its loss of membership in the Bank prior to the Bank's final disbursement of AHP subsidies.